IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6862 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEGHDOOT AUTOMOBILES

Versus

AHMEDABAD ELECTRICITY CO.LTD.

Appearance:

MR BK DAMANI for the Petitioner.
MR KB PUJARA for the Respondent.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 25/06/2004

ORAL JUDGEMENT

1. Rule. Learned counsel for the respondent

waives service of notice of Rule.

2. The petitioner seeks a writ of this Court under Article 226 of the Constitution to direct the respondent to accept 20% of the amount of the provisional assessment and to allow the petitioner to go before the appellate authority, under section 127 of the Electricity Act, 2003.

3. The learned counsel appearing for the petitioner submits that there is already a case booked against the petitioner by the respondent company. The provisional assessment has already been carried out in pursuance of section 126(1) and (2) of The Electricity Act, 2003 (hereinafter referred to as "The Act of 2003"). It is also averred by the learned counsel for the petitioner that the petitioner has ready deposited 1/3rd of the amount assessed by the respondent and therefore, the petitioner is entitled for reconnection of electricity connection and to go before the appellate authority as per section 127 of the Act of 2003. The relevant provisions of The Act of 2003 read as under:

"126. Assessment:-
(1).....
(2).....

(3) The person, on whom a notice has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him;
Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.
(5).....
(6).....

127. Appeal to appellate authority : (1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal, in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amountequal to one third of the assessed amount is deposited inc ash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed alongwith the appeal.
(3)....
(4)....
(5)....
(6)...."

4. On the basis of the aforesaid provisions, the learned counsel appearing for the respondent company submits that the present petition is premature in nature. Upon issuance of the notice to the petitioner, the provisional assessment was carried out because of serious malpractices and the alleged violation of the Act committed by the petitioner. It is further submitted by the learned counsel for the respondent that provisional assessment has been carried out in pursuance of the aforesaid section 126 of the Act. The said provisional assessment is produced before this Court alongwith affidavit-in-reply. The petitioner also accepts receipt of the said provisions assessment letter issued by the respondent. The said provisional assessment is dated 18th June, 2004 and therefore, if the petitioner has got any objections against the aforesaid provisional assessment, the said objection could have been filed by the petitioner under section 126(3) of the Act before the respondent company. There is an inbuilt provision under the Act to ventilate grievance against the authority and to arrive at a final conclusion as to the assessment. There is a vast difference between provisional assessment and final assessment. The provisional assessment is a rough and estimated calculation of the assessment. The same can never be made subject matter of the present petition. What is yet to be finalised (assessment) can never be challenged by the petitioner and therefore, the petitioner is not entitled to get writ of this court under extraordinary jurisdiction under Article 226 of the Constitution. It is also contended by the learned counsel for the respondent that what is made appellable under the Act of 2003 under section 127 is the final assessment and not the provisional one.

5. Looking to the aforesaid inbuilt mechanism of notice, provisional assessment, objection, final order of assessment and thereafter challenge before the appellate authority under section 127 of the Act, I am of the considered opinion that the present petition is premature in nature and deserves to be dismissed. The

learned counsel appearing for the petitioner submits that the petitioner has ready deposited 1/3rd of the amount of provisional assessment before the respondent authority and therefore, the petitioner is entitled to immediate reconnection of electricity pursuant to the Guidelines for Vigilance, Assessment, and Appellate Authority Activities. The said booklet is presented by the learned counsel for the petitioner during the course of arguments and has relied upon Section-C of the said booklet and certain provisions made thereunder.

6. The Act of 2003 provides sufficient guidelines for challenging the assessment before the appellate authority. There is hardly any need to read any further document as presented by the learned counsel for the petitioner in the booklet form. The assessment as of today is a provisional and objection against the said provisional assessment has been raised directly in the memo of the writ petition and not before the respondent company as envisaged under section126(3) of the Act. Therefore, unless and until provisional assessment is converted into final assessment, the stage of challenging the same before the appellate authority under section 127 of the Act does not arise.

7. In view of the aforesaid facts and circumstances and clear legal position, this petition fails and is hereby dismissed in limine. Rule is discharged with no order as to costs.

(D.N.Patel,J)

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